UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,656	10/22/2003	Ahti Muhonen	042933/269768	5860

826   7590   02/18/2010
ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

EXAMINER
DAILEY, THOMAS J

ART UNIT	PAPER NUMBER
2452	

MAIL DATE	DELIVERY MODE
02/18/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	*10/690,656*	MUHONEN ET AL.
	Examiner	**Art Unit**	
	Thomas J. Dailey	2452	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>22 January 2010</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   > Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

   Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   > NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-7,9 and 11-39*.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/THU NGUYEN/
 Supervisory Patent Examiner, Art Unit 2452

/TD/
 Patent Examiner, Art Unit 2452

Continuation of 3. NOTE: While the applicant has amended "sending" to "directing transmission of" and contends this simply narrows the issue for appeal, the examiner disagrees, as such language is narrower than the previously rejected claims, and hence, requires further consideration.

Continuation of 11. does NOT place the application in condition for allowance because: The applicant submitted arguments are unpersuasive and the claims have been amended with language that would require further consideration. See response to arguments below.

The applicant argues with respect to claim 1, 6, 7, 9, 11-13, 17-20, 24-29, and 34-39 that the combination of Pecus in view of Deo is improper because Pecus fails to disclose its terminal having less processing power, and therefore one of ordinary skill in the art would see no need to use the method disclosed in Deo.

In regards to the combination of Pecus and Deo, the applicant has pointed to various exemplary embodiments of the Pecus disclosure to reach the conclusion that no where is it disclosed that there is a terminal with less processing power than an associated apparatus.   This conclusion fails to appreciate what the teachings would have suggested to those of ordinary skill in the art. That is, Deo discloses shifting the processing burden of a terminal to a computer it is networked with (Deo, column 2, line 65-column 3, line 4) and one of ordinary skill in the art would appreciate that computer networks have a heterogeneous array of computers with varying processing powers (networks suggested by the Deo and Pecus teachings, i.e. not strictly limited to exemplary embodiments; further, never, even in the exemplary embodiments of the Pecus disclosure, would it suggest to one of ordinary skill that the terminal must have greater processing power than the associated apparatus, a conclusion the applicant has reached). Therefore, by combining Deo and Pecus, Pecus's system would be better suited if the end node had less processing power than the NOC.

The applicant argues with respect to claim 1, 6, 7, 9, 11-13, 17-20, 24-29, and 34-39 that the combination of Pecus in view of Deo is improper because Deo's solution leads away from the alleged combination.

In this particular case, the examiner's proposed combination would not have changed the principle operation of either of the Pecus (delivering multimedia content to internet users without degradation, see column 4, lines 55-61) or Deo (remotely managing memory in programmable portable information devices from external computers, see column 1, lines 7-12) disclosures, and therefore one of ordinary skill in the art would still have motivation to combine the teachings (elaborated on in paragraph 6 of the previous Final Rejection).

The applicant argues with respect to claims 3, 4, 14,15, 21, 22, 31, and 32, 30 that the combination of Pecus and Deo fails to disclose a determining content having an exceed client expiration time, and from that content, sending or receiving instructions to delete content having the highest deletion priority value from the comparison of the deletion priority values.

The examiner disagrees. Pecus and Deo discloses, as substantially recited in the claims, determining a plurality of pieces of content having an exceeded client expiration time (Pecus, column 17, lines 15-20, "expired files" are identified), identifying a piece of content having a highest deletion priority value from a comparison of the deletion priority values of the pieces of content having an exceeded client expiration time (column 17, lines 20-24, the data manager checks for file(s) marked for forced deletion; i.e. a plurality of files' forced deletion flag is compared with the Boolean value "true" to determine if they should be deleted, "true" being the highest value for deletion priority; further, as all files are checked those that are expired will also be checked), and send one or more instructions instructing the terminal to delete the identified piece of content (Pecus, column 17, lines 15-28, if files are both expired and have are marked for forced deletion, they will be deleted).

The applicant argues with respect to claims 5, 16, 23, and 33 that the combination of Pecus and Deo fails to disclose when memory of the terminal does not have sufficient storage capacity for at least one subsequent piece of content and each piece of content having an exceeded client expiration time has been identified and deleted, the processor is further configured to identify at least one piece of content having a highest deletion priority value from a comparison of the deletion priority values of any pieces of content remaining in memory of the terminal, and send one or more instructions instructing the terminal to delete the identified at least one piece of content.

The examiner disagrees. Pecus and Deo disclose when memory of the terminal does not have sufficient storage capacity for at least one subsequent piece of content and each piece of content having an exceeded client expiration time has been identified and deleted (see claim 4 rejection and response to arguments), the processor is further configured to identify at least one piece of content having a highest deletion priority value from a comparison of the deletion priority values of any pieces of content remaining in memory of the terminal column 17, lines 20-24, the data manager checks for file(s) marked for forced deletion; i.e. a plurality of files' forced deletion flag is compared with the Boolean value "true" to determine if they should be deleted, "true" being the highest value for deletion priority), and send one or more instructions instructing the terminal to delete the identified at least one piece of content (Pecus, column 17, lines 15-28).

The applicant argues with respect to claims 7, 25, and 35 that the combination of Pecus and Deo fail to disclose a server expiration time as recited in the claims.

The examiner disagrees. Pecus discloses the processor is further configured to monitor the server expiration time of the at least one piece of content in memory of the apparatus to determine if at least one piece of content has an exceeded server expiration time (Pecus, column 17, lines 15-28, expiration times may be relative to different clocks, e.g. system or network as recited on line 19-20), and if at least one piece of content has an exceeded server expiration time, delete the at least one piece of content having an expired server expiration time (Pecus, column 17, lines 15-28).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Dailey whose telephone number is 571-270-1246. The examiner can normally be reached on Monday thru Friday; 9:00am - 5:00pm.